THE COMPANIES (AMENDMENT) BILL, 1999

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI M. THAMBI DURAI): Madam, I move:

"That the Bill further to amend the Companies Act, 1956, as passed by Lok Sabha, be taken into consideration."

Madam, as you are aware, the Companies (Amendment) Bill, 1998, could not be passed during the Winter Session and Companies (Amendment) Ordinance, 1999 (No. 1 of 1999) was promulgated on 7th January, 1999, with appropriate modifications of the earlier Bill.

The Companies Act, 1956, was enacted more than four decades back and the same has been amended from time to time to meet the changes in the corporate sector.

The last amendment in the Act was carried out in 1996. The Companies limited by shares in 1956-57 were only 29,357 and their number has increased 17 times. Thus, there has been a phenomenal growth of corporate sector in our country. During this period, there have been changes nationally as well as internationally in corporate sector and the new industries particularly in the field of telecommunication information technology, companies in financial and power sector and infrastructure have been set up. The new corporate organisations function with huge resources for a vast market and, therefore, the corporate law has also to be modified in tune with the changes in trade and industry. Further, the Act has to be modified in accordance with the Government's current policy of liberalisation and deregulation.

Accordingly, the Government had introduced a comprehensive Bill, 1997 in Rajya Sabha on 14.8.1997 to replace the Companies Act, 1956. The Bill was based on recommendations of a working group and its provisions are based on a wide public debate on its recommendations. The Bill has been presently referred to the Standing Committee on Home Affairs. The said Committee is likely to take some time to give its recommendations to the House. In the meantime, as the Indian corporate sector, particularly capital market was going through a difficult phase, it was felt necessary for the Government to promulgate Companies (Amendment) Ordinance, 1998. However, the Companies (Amendment) Bill, 1998 to replace the Ordinance was introduced on 22nd December, 1998, could not be passed by Lok Sabha during the Winter Session.

The President was pleased to repromulgate Companies (Amendment) Ordinance, 1999 (No. 1 of 1999) on 7th January, 1999, with certain amendments, so as to give effect to the provisons of earlier Ordinance for the sake of continuity. The present Bill as passed by Lok Sabha seeks to replace these Ordinances and it now moved for your consideration and passing.

The Bill contains certain important measures to promote investors' confidence in capital market and to encourage inter-corporate investment. Firstly, it seeks to allow the companies to buy-back their own shares for enabling them to restructure their capital. Certain concern has been voiced against the buy-back provisions such as that if buy-back is permitted, the funds of the company will be siphoned off This apprehension is misconceived inasmuch as the buy-back of shares can be done only by companies which have adequate capital reserves and are financially sound. Suitable safeguards have been provided for e.g. shareholder's approval by special resolution is necessary. The Department of Company Affairs has already perscribed declaration of solvency to be signed and filed by directors before they make such an issue. Even in cases where financial institution's approval will be necessary, it is proposed to provide in the rules a time limit within which financial institution will give its approval. Moreover, the buy-back can be made only upto 25% of the paid-up capital of the company after depositing requisite funds in Escrow Account. In fact, suitable safeguards have resulted in companies taking up this recourse only after serious consideraion. There are indications that only financially sound and viable companies will resort to this measure in course of time.

The proposed Bill also makes liberal provisons allowing companies to make inter-corporate investments or give loans or provide guarantees upto 60% of the paid up capital and

reserves on the lines of suggestions and recommendations by a Working Group constituted for amending the Company Law. The provisions with regard to obtaining of clearance from financial institutions earlier provided in all cases is now confined to cases where a company has defaulted in making the payment of the loans to financial instituions on due dates and in cases where it exceeds 60% of net worth. Changes have been made for exempting wholly owned subsidiaries from the restrictions imposed. Suitable safeguards have been provided to protect the interest of shareholders. These checks will ensure that companies do not divert their funds in unproductive areas.

The Bill also provides a facility to investors to make nominations in respect of fixed deposits, shares or debentures in favour of a person who will hold these shares, debentures or will get the benefit of fixed deposit receipt in the event of his death. The Bill further proposes to make a provison for establishment of Investor Education and Protection Fund which will also be in the interest of investors.

These measures would not only result in better Corporate Governance but also would ensure companies are not allowed to divert their funds against the interests of investors. Further, companies defaulting in payments of Dividend/deposit repayment and submission of annual returns have been denied the benefit of these measures. Administrative measures are also being streamlined and tightened to take severe action against unscrupulous corporate entities and their directors.

The question was proposed.

THE DEPUTY CHAIRMAN: As the House desires, we will take up the Resolution disapproving it, as also the consideration of this Bill, tomorrow.

The House now stands adjourned till 11 o'clock tomorrow.

The House then adjourned at fifty-three minutes past five of the clock till eleven of the clock on Thursday, the 11th March, 1999.